UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,035	06/20/2003	David L. Kaminsky	5577-262	8462

20792 7590 08/04/2006	EXAMINER
MYERS BIGEL SIBLEY & SAJOVEC PO BOX 37428 RALEIGH, NC 27627	DUNCAN, MARC M

ART UNIT	PAPER NUMBER
2113	

DATE MAILED: 08/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>22 May 2006</u>.

2a) ☐ This action is **FINAL.**   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-4 and 6-20</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-3,8-11,13-20 and 24</u> is/are rejected.

7) ☒ Claim(s) <u>4,6,7,12 and 21-23</u> is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on <u>20 June 2003</u> is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Status of the Claims

Claims 14-20 and 24 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter.

Claims 1-2, 8-11, 13-15 and 19-20 are rejected under 35 U.S.C. 102(e) as being

anticipated by Marwaha (2004/0181685).

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marwaha

in view of Musman (2003/0126501).

Claims 4,6, 7, 12 and 21-23 are objected to.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
conditions and requirements of this title.

Claims 14-20 and 24 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter.

Claims 14-18 are claims to a system for performing the current invention.

Applicant explicitly state on page 7, line 24, that this system can take the form of an

entirely software embodiment. A system composed entirely of software that is not

tangibly embodied on a computer readable medium does not constitute statutory

subject matter.

Claims 19-20 and 24 are not limited to tangible embodiments. In view of

Applicant's disclosure, specification page 7, lines 28-31, the medium is not limited to

tangible embodiments, instead being defined as including both tangible embodiments

(e.g., hard disk, CD-ROM, etc.) and intangible embodiments (e.g., a transmission

medium). As such, the claim is not limited to statutory subject matter and is therefore

non-statutory.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 8-11, 13-15 and 19-20 are rejected under 35 U.S.C. 102(e) as being

anticipated by Marwaha (2004/0181685).

Regarding claim 1:

Marwaha teaches:

generating a symptom that identifies a problem in the application program

(paragraph 0056, lines 3-5 – an incoming alert is equivalent to a symptom);

identifying selected IT components in the IT infrastructure that may cause the

problem in the application program, based on the symptom (paragraph 0056, lines 8-10

– the source of the problem associated with the message is determined);

obtaining a respective situation for a respective selected IT component, the

respective situation being one of a set of component-independent predefined situation

categories that is associated with the respective selected IT component, so as to

provide status of the selected IT components in a common situation format that includes

the associated one of the component-independent predefined situation categories

(paragraph 0056 lines 8-10, paragraph 0058 tables, paragraph 0061 lines 1-5 – the alert

messages that are received are parsed and tokens extracted to determined a status of

the alert and then the message is put into a common event format that details the

status, etc.); and

analyzing the respective situations that are obtained to identify at least one

problem in the selected IT components that may cause the problem in the application

program (Fig. 11 – 1108, 1110, 1120 and accompanying descriptions in paragraphs

0142 and 0143).

Regarding claim 2:

Marwaha teaches:

wherein the analyzing is followed by automatically identifying corrective action in

the IT infrastructure based on the at least one problem in the selected IT components

(Fig. 11 – 1120, 1124 and accompanying descriptions in paragraph 0143).

Regarding claim 8:

Marwaha teaches:

wherein the automatically identifying comprises generating a common situation

format representation of the corrective action that is identified (paragraph 065 tables –

see example tokens for Action. The corrective action is identified by a single character

chosen from the numerals 1-3 for all actions.).

Regarding claim 9:

Marwaha teaches:

wherein the selected IT components comprise IT components that are used

when running the application program on the IT infrastructure (paragraph 0003 – the

components are components of the enterprise being managed).

Regarding claim 10:

Marwaha teaches:

obtaining respective ones of a set of component-independent predefined status

categories that are associated with respective selected ones of the IT components, so

as to provide status of the respective selected ones of the IT components in a common,

component-independent format (paragraph 0056 lines 8-10, paragraph 0058 tables,

paragraph 0061 lines 1-5 – the alert messages that are received are parsed and tokens

extracted to determined a status of the alert and then the message is put into a common

event format that details the status, etc. The tokens are component-independent); and

analyzing the respective status categories that are obtained to identify at least

one problem in the selected ones of the IT components that may cause the problem in

the application program (Fig. 11 – 1108, 1110, 1120 and accompanying descriptions in

paragraphs 0142 and 0143).

Regarding claim 11:

Marwaha teaches:

wherein the analyzing is followed by automatically identifying corrective action in

the IT infrastructure based on the at least one problem in the selected ones of the IT

components (Fig. 11 – 1120, 1124 and accompanying descriptions in paragraph 0143).

Regarding claim 13:

Marwaha teaches:

wherein the selected ones of the IT components comprise IT components that

are used when running the application program on the IT infrastructure (paragraph 0003

– the components are components of the enterprise being managed).

Regarding claim 14:

Claim 14 is rejected as the system for performing the method of claim 1 above.

Regarding claim 15:

Claim 15 is rejected as the system for performing the method of claim 2 above.

Regarding claim 19:

Claim 19 is rejected as the computer program product that causes the method of

claim 10 to be performed.

Regarding claim 20:

Claim 20 is rejected as the computer program product that causes the method of

claim 12 to be performed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marwaha in view of Musman (2003/0126501).

Regarding claim 3:

The teachings of Marwaha are outlined above.

Marwaha does not explicitly teach generating a symptom based on an error log. Marwaha does, however, teach the generation of a common event format from source specific event information.

Musman teaches generating a symptom based on an error log (paragraph 0037 lines 5-8).

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the error log teaching of Musman with the common event format teachings of Marwaha.

One of ordinary skill in the art at the time of invention would have been motivated to make the combination because Marwaha teaches generating common event format messages from source-specific event information. Musman teaches that using an agent based approach to generating messages, wherein the agents generate the messages based on log files (paragraph 0037 line 5-8), provides the benefits of increased survivability (paragraph 0030 lines 1-3) and a distributed, decentralized, and yet coordinated decision making (paragraph 0032 lines 5-7).

Response to Arguments

Applicant's arguments filed 5/22/06 have been fully considered but they are not persuasive.

Regarding applicant's arguments concerning the 35 USC 101 rejection, the examiner respectfully disagrees. Applicant has explicitly defined a computer usable storage medium as including transmission media in the specification. A transmission medium is not limited to solely the tangible embodiments that applicant includes in the arguments submitted with the current amendments to the claims. A transmission medium, properly interpreted, while it may include the hardware/software that is discussed in applicant's arguments, is not limited to such hardware/software and, in fact, includes all forms of transmission media. Broadly claimed transmission media, accordingly, have been deemed non-statutory subject matter.

Regarding applicant's arguments concerning claims 1, 10, 14 and 19, the examiner respectfully disagrees.

Applicant argues that the cited portion of the reference does not describe or suggest that selected IT components that may cause the problem in the application program are identified based on a symptom. The examiner respectfully disagrees. As the examiner stated, a symptom, as claimed, reads on the alert of the Marwaha reference. Further, a source of the alert message is determined. This determination of a source of an alert is clearly read on by an identification of a component that may cause the problem. The source of an alert is clearly a component that may be causing a problem.

Applicant argues that the alerts of Marwaha cannot also read on the "situations" recited in claim 1. The examiner did not find any part of the rejection of claim 1 wherein the examiner stated that the claimed situations also read on the alerts of the Marwaha reference.

Applicant argues that Marwaha's common event format conversion is not read on by the respective situation as claimed in the instant claims. The examiner respectfully disagrees. The claims, read in light of the specification, contain the limitation of a respective component-independent predefined situation category that provides the status of components. Marwaha teaches that an incoming message is placed in a common event format. This common event format is a conversion from the component specific format of each element manager to a common event format that is component independent and clearly provides the status of the component that is being generating the problem that is causing the alert. This is clearly equivalent to a situation that is used to be independent of the component specific error reporting of individual components.

Applicant argues that Marwaha cannot anticipate or suggest the recitations of the independent claims because the reference and the present application are directed to solving different problems. The examiner respectfully disagrees. The fact that present application's recited intended use may or may not differ from that of the applied reference has no bearing on whether or not the claim limitations of the instant claims read on the teachings of the applied reference.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Marc Duncan whose telephone number is 571-272-

3646. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Robert Beausoliel can be reached on 571-272-3645. The fax phone

number for the organization where this application or proceeding is assigned is 571-

273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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